

MINUTES

STATE OF WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

September 9, 2002 - Regular Meeting

4224 6th Avenue S.E., Building 1

Lacey, Washington, 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: Good afternoon. The Monday, September 9, 2002 meeting of the Washington State Energy Facility Site Evaluation Council will come to order.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Department of Ecology

Department of Fish & Wildlife

Department of Natural Resources

Utilities and Transportation Commission

Port of Grays Harbor

Port of Bellingham

Chair

Dick Fryhling

Chuck Carelli

Jenene Fenton

Tony Ifie

Tim Sweeney & Jeffrey Showman

Isabelle Lamb

Stephan Jilk – via phone

Jim Luce

MR. MILLS: And I note the presence of Chair Jim Luce, and there is a quorum.

EFSEC Staff and Counsel

Allen Fiksdal

Irina Makarow

Mariah Laamb

Michelle Elling

Mike Mills

Rusty Fallis – AAG

Julian Dewell, ALJ – via phone

EFSEC Guests

Karen McGaffey, Perkins Coie

Tom McKinney, BPA

Mike Torpey, BP Cherry Point

Mike Lufkin, CFE – BP Cherry Point

Steve Bates, Chehalis Power

Darrel Peeples, Newport Northwest

Tony Usibelli, Energy Policy – CTED

Tom Schneider, Chehalis Power

Mike Elmer, Starbuck Power

Laura Schinnell, Energy Northwest

Cindy Custer, BPA

Alan Harger, DOT

Liz Thomas, Preston Gates & Ellis

John Mudge, Critical Issues Council

Curt Leigh, WDFW

Ron Lavigne, CFE – Wallula

Marc Boule', Shapiro & Associates

John Williams, REBOUND

Nancy Hirsch, NW Energy Coalition
Brad Howard, TCE
Duncan McCaig, Chehalis Power

Jamey Taylor, DNR
Susan Meyer – Ecology, NWRO – via phone

ITEM 3: APPROVAL OF MINUTES

CHAIR LUCE: The first item on the agenda is approval of the minutes of July 8, 2002, July 23, 2002 special meeting, and August 12, 2002 regular meeting. Have the Council members had a chance to review the minutes, and if they have, do they have any comments?

MR. FIKSDAL: Mr. Chairman.

CHAIR LUCE: Yes.

MR. FIKSDAL: We don't have the August 12 meeting before the Council. We were unable to complete them for today, so it's just the July 8 and July 23.

CHAIR LUCE: Thank you, Mr. Fiksdal. Any comments with respect to the minutes of July 8 and July 23 minutes? Do we have a motion to adopt the minutes as prepared?

MS. FENTON: So moved.

MR. IFIE: Second.

CHAIR LUCE: All in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: Thank you very much the Minutes are adopted.

ITEM 4: ADOPTION OF THE PROPOSED AGENDA

CHAIR LUCE: The next item on the agenda is the adoption of the proposed agenda for today. We have several items on the agenda. Mr. Mills, do you have any interest or has there been any interest expressed in reorganizing the agenda?

MR. MILLS: Yes, sir. I would like to move the discussion about the Satsop project to Item 6, and that would move Chehalis to No. 7, and that's to accommodate Ms. Schinnell's schedule.

CHAIR LUCE: Council members, have any questions about that? Any other changes to the agenda? All right. We will reorder 6 as 7 and 7 as 6.

ITEM 5: BP CHERRY POINT

<i>Status Report</i>	<i>Michelle Elling, EFSEC</i>
----------------------	-------------------------------

CHAIR LUCE: Proceeding with the agenda, the first item on the agenda is BP Cherry Point. We have Michelle Elling to give us the status report on that particular project. Michelle.

MS. ELLING: Thank you. For the BP Cherry Point Project on July 26 our independent consultant, Shapiro & Associates, had reviewed the application for site certification and submitted a report of that review which the Council received with some outlying issues for BP to address at that time.

MS. MEYER: Hello. This is Susan Meyer.

MS. ELLING: Susan, thank you for joining us. We're just starting the discussion on BP. Susan Meyer is from Ecology. BP responded to our independent consultant's review of the

application on August 29, and the Council has before them today a package of information that responds to that evaluation. In it there is an errata sheet that responds to questions that were raised by our independent consultant, small minor changes to the application and also two reports concerning the wetland mitigation plan. We've asked our independent consultant to review this information, and we do expect that they should be giving us another determination by September 16.

<i>Process for Early Intervention</i>	<i>Michelle Elling, EFSEC</i>
---------------------------------------	-------------------------------

MS. ELLING: The Applicant had requested in their application for site certification early intervention, and that was in the cover letter to the application. And I would like to invite Karen McGaffey to come up and speak a little bit about what the Applicant proposes that to look like.

MS. McGAFFEY: Thank you, Michelle, and thank you, Council. We appreciate the opportunity to talk about scheduling issues to you. When BP first approached EFSEC with the idea of doing a co-generation project adjacent to the BP refinery in Whatcom County, it was almost 18 months ago. BP took the Council's advice and the Council staff's advice to participate in a potential site study process. Although that process is time consuming and extensive, BP was convinced that it would result in a better project by getting input early on, and that time spent on the front end doing the potential site study would pay off by saving the time at the back end by allowing the Council to process the application more efficiently. During the executive committee meeting last week we discussed with many of you, BP's concerns that any draft schedule that had been prepared by Michelle and other staff members still seem to contemplate an 11- to 12-month review process. The executive committee then rightfully challenged us to suggest ways in which we might try and shorten that schedule, and that's what we've tried to do. We spent a considerable amount of time on Friday afternoon talking with Allen, Irina and Michelle and came up with a number of suggestions, which we have tried to incorporate as well. Earlier this morning we sent a revised schedule that each of you should have been given in your packets.

MS. ELLING: So just to explain, you have three sheets of paper in front of you. One is green, and that shows what staff proposes and thinks could be the schedule for this project, and that's thanks to Mr. Carelli. There's a lavender sheet, and that's what the Applicant has proposed, and then you also have a sheet that's titled Draft Schedule for BP and NEPA-SEPA EIS adjudicatory process, and that's a more detailed discussion of what staff proposed.

MS. McGAFFEY: If that's now clear what papers you have in front of you, I believe the lavender paper is the four columned schedule, and what we tried to do by separating it into columns was reflect really the different tracks that EFSEC has to simultaneously pursue, the SEPA track, the adjudicatory process, and the PSD permitting. What I'd like to do is highlight really four key points that distinguish the schedule we proposed from the original staff schedule which I believe is on white paper. And I confess, I haven't seen the green piece of paper, so I am not sure how that compares.

The first significant difference you will find on the October 4th date in which we've proposed that Shapiro would provide an administrative draft of the DEIS to EFSEC and BPA staff by that date. I believe staff had originally proposed this occur a week later, by October 11th. In speaking with staff, it occurs to us and consistent with what they have told us that the staff both for EFSEC and BPA plans to review sections as they become available from Shapiro, and what this date would really reflect is when the whole package was put together for the first time. Given our involvement in the potential site study process and Shapiro's involvement in the

potential site study process, we thought the October 4th date, five months after submission of the application, was not an unreasonable date.

The second significant change occurs on October 11th. We suggested on that date in the EIS process EFSEC staff and BPA staff would complete its review of the administrative draft and provide its comments to Shapiro. In our conversations with EFSEC staff last week that date appeared feasible to them. The significant difference, however, is that the staff proposal contemplated Council members also reviewing this administrative draft document, and it appeared once you added that additional layer of review of a draft document that added a couple more weeks to the schedule. We've suggested eliminating that step, recognizing that this is a draft document that goes out, that Allen is the SEPA official, and that it would not be inappropriate for that document to go out without the review of individual Council members.

The third significant difference occurs on the adjudicatory process track, if you will. You will see that on September 16 we've optimistically assumed that Shapiro will in fact issue a completeness letter, which we have every reason to believe they will. We've indicated the staff would then immediately send out a notice for an adjudicatory hearing, which would establish a deadline for intervention. If you look down, the deadline for intervention then becomes October 7th. We've requested that the Council make a three-week deadline for filings for petitions for intervention rather than I believe the 30 days that was requested or was indicated in the draft schedule. To my knowledge there is no regulatory requirement that it be 30 days. In the past it seems to have varied between 20 and 30 days on different projects. And given the tremendous amount of public input and outreach that was done in the potential study process, we believe three weeks would be adequate.

Fourth, and I think the last significant difference occurs on October 14th. We have suggested that the Council hold a prehearing conference on approximately that date, and that arguments regarding intervention to the extent that there are any disputes about intervention occur orally at that point rather than being proceeded by a series of written submissions. It's our hope that that can be done more quickly and more efficiently if it's done just orally on the spot at the prehearing conference rather than having a bunch of submissions in advance. I think those are the significant differences. And in making those different changes we end up saving about a month on the schedule, which is what we are hoping to accomplish.

MS. ELLING: On September 4 and 5, there was a site visit by Ecology, Corps of Engineers, and, our independent consultant to look at the wetlands plans that had been submitted. The plans that are before you now were given to a core group to look at wetlands issues last month. Those people met to go to the site to determine whether or not the wetland delineation was correct and look at the wetland mitigation that was offered. Susan Meyer from Ecology attended this meeting, and, Susan, could you tell us a little bit about your impressions.

MS. MEYER: Yes. We looked over the entire mitigation site pretty much, and in the morning we had some detailed discussions about the plan, the reports. The Corps and Ecology and Shapiro pretty much were in agreement that the mitigation as proposed was not entirely sufficient to offset the impact of the 30-acre wetland fill. We did offer numerous suggestions for how they could be offset, so the consultant, URS, could amend their plan and move forward from that. And I also did speak with Olivia Romano from the Corps, and I don't want to speak for her, but what she basically told me was that on Thursday when I was not there, that the Corps went out to verify the wetland delineation on the impact site and found that the data sheets that were done with the delineation were largely incomplete, and they weren't really able to do the

verification. And so apparently the Corps gave Golder and their subconsultant some guidance as to how to make it so that the Corps could at least accept the delineation on the impact site.

MS. ELLING: My understanding is that basically the Council has all the information before them that they need to proceed with the adjudicatory process for this project, although, we do expect revisions to be made to the wetlands mitigation. Maybe Karen can talk a little bit about that.

MS. McGAFFEY: Thank you. I guess there are two issues that Ms. Meyer raised that I want to address. The first has to do with the adequacy of the mitigation plan. I think it's fair to say that there's a difference of opinion among experts about whether or not the mitigation plan that's contained in the application is sufficient. That is a difference that we hope to work through and resolve amicably among the parties, and we would like to be later in front of the Council presenting stipulations that address the wetlands issue much like other applicants have done in connection with other projects. But in our view the application is certainly complete, there is a mitigation plan, and we'll be struggling in future months to try and resolve whether or not that plan is adequate.

The second issue that Ms. Meyer mentioned it was the delineation issue. And I have to confess that I was not at the meetings on either the 4th or the 5th, but it was my understanding from those who were there, that the Corps and others involved had accepted the delineation. Again, I don't think it's important for us to resolve that issue here today. If there are outstanding issues about the adequacy of the wetlands work that has been done, I expect we'll be working through those issues with the agencies involved. Again, in our view the application is complete and we would like the Council to authorize the staff to initiate the adjudicatory process by sending out a notice of the hearing as soon as they receive the completeness determination from Shapiro.

MS. ELLING: As the Council knows this will be a joint SEPA-NEPA EIS, and the Corps of Engineers are a cooperating agency with BPA as lead agency for the NEPA side. October 11th was the date that our independent consultant had proposed the administrative Draft EIS could come to us, staff here at EFSEC for review. Staff typically distributes that to the Council and then collects their comments and give those back to our independent consultant to incorporate into the Draft EIS prior to it being issued. BPA also has review that they need to do on this administrative Draft EIS and Corps of Engineers would also need to review this Draft EIS. We are not entirely clear now how the wetlands being worked out will affect the development of the Draft EIS or whether or not October 11th is still a solid date that we can shoot for. I just wanted to let the Council know that that could potentially affect that initial date.

MR. FIKSDAL: I think there's two issues that's been talked about. One is the recommendation of Ms. McGaffey to have the Council authorize staff to issue the notice for intervention once Shapiro gives us or tells us that they think it's sufficient to proceed, which we think will be before the 16th of September, and then the next issue would be the schedule if you want to discuss that.

CHAIR LUCE: Does the Council have any comments with respect to those issues? With my own inclination, and I am only speaking for myself, is that what I have heard staff report is that the application is complete and that for that reason we could proceed to issue the notice for the adjudicatory proceeding.

MR. FIKSDAL: We use this word complete, and I think what we should be using as a term is it sufficient to proceed with the adjudication. Because as we've seen in other applications there are minor modifications. This one has some issues regarding wetlands, but is there enough in the application so that the Council could proceed with the adjudicative process.

CHAIR LUCE: And what you're saying, if I hear you correctly, is our independent consultant can be expected to tell us that there is sufficient information to proceed by the 16th and issue a letter accordingly.

MR. FIKSDAL: Yes.

CHAIR LUCE: If that happens, I would think that, we could issue the notice of commencement of the adjudicatory process. And the next question that falls out after that is what about the schedule? There's been a lot of talk about schedule with this week or that week or otherwise and the pleasure of the Council. Do we want to have a chance to compare the schedules? We've got a lavender paper and a green paper and a white paper.

MS. FENTON: I would like to compare the two because I wasn't at last Monday's meeting, and I don't understand why there is a potential month difference between the purple sheet and the green sheet, and Karen maybe said it, but I didn't catch it. Is there a month difference and why the difference?

MS. McGAFFEY: Well, there is a difference you see on -- or at least I was comparing the purple sheet to the white sheet.

MS. McGAFFEY: Well, if we compare the green sheet to the purple sheet, you will see that the hearings on the green sheet begin in or take place in March whereas on the lavender sheet they take place in February, so that's where you see the month difference. Now where that month difference arises from occurs from a shortening of a bunch of time frames along the way and eliminating the Council review of the administrative draft of the EIS. And that's what I was trying to walk through before where we save a week here and a week there to produce that month.

MR. FIKSDAL: Before we get into that, I think that's a whole separate issue. I think the Council should resolve the adjudication issue, whether we are going issue a notice for adjudication. I think the schedule as we all know we can plan all we want, and it would be nice to keep it to a schedule, and I think that the schedule that Ms. McGaffey has proposed to be a great schedule to keep if we can do it. But I think let's not get detracted.

CHAIR LUCE: Do we have a motion?

MS. FENTON: That's exactly what I was asking because the purple sheet says September 16th and the green sheet looks like it's mid October, and if there's a month difference is there a reason for the month difference?

MR. CARELLI: If I could, since the green sheet is a product of my imagination. The green sheet I provided to Michelle this morning simply as a comparison. This is the precise schedule that we had anticipated to use for Wallula, and it was at the time we adopted it for Wallula Power was a marked change between what we had done previously to arrive at this. And I'm frankly not convinced that we are going to do anything other than the schedule as shown on the green sheet just from the standpoint that the amount of time that it's going to take to get various things completed. I'm not saying it's not possible, but to shorten the schedule further I think would be a substantial undertaking, so the difference is, you know, my imagination and what the Applicant has proposed.

CHAIR LUCE: Mr. Fiksdal, back to your point. Do you think the Council we could get a motion to proceed? I'm sorry. We had a question from the Counsel for the Environment. Mr. Lufkin, do you have a question?

MR. LUFKIN: I would like to make a comment on the early intervention.

CHAIR LUCE: Mr. Lufkin would like to make some comments on early intervention. Mr. Lufkin, would you please come forward.

MR. LUFKIN: Thank you, Mr. Chairman and Council Members. I just wanted the opportunity to say a few things about the early intervention and how that practice has worked. These are comments that you've probably heard before in regards to the Wallula hearing, but I feel that they need to be heard or at least stated for the record again. It's Counsel for the Environment's position that the early intervention period does very little to add to the efficiency of the hearing and that not allowing interested parties and members of the public the opportunity to have a chance to review the DEIS and make an informed decision about their decision on intervention detracts from the public's opportunity to participate in these proceedings.

Washington citizens are intimately familiar with the SEPA process. Many are not familiar with the EFSEC process. So by forcing them to rely on the Applicant's documents and the independent consultant report in determining whether to intervene rather than relying on a document such as the DEIS forces them to look in an area where frankly the average citizen just does not have the ability to make that type of determination. Again, it also forces applicants to throw issues up just as a place holder to force them to say, hey, wetlands is my issue or air quality is my issue because a lot of them before they actually refine what those issues actually are for purposes of the proceeding they're going to do that through the use of the DEIS. They do not have most of the time the ability to go out and independently do an analysis of the application and the documents submitted by the Applicant.

In regards to the schedule itself and the proposals that are out there, one thing in particular that struck me was the proposal by the Applicant to shorten the intervention period by another nine days, so from 30 days to 21 days. I do have a problem with this continual effort to just push the project in an interest of speed to shorten time frames like that which have been established by the Council after deliberation and without any justification or analysis of what the impacts on the public's ability to participate in the process and to just rush ahead and to shorten the process, you know, a week here, a week there. Maybe some of it can be accomplished, but there are instances where those time frames in that length of time in particular are set for a reason, and they're there so that the public does have an adequate opportunity to participate in the process. What we are asking these individuals to do at this juncture is to look at information that has been submitted by the Applicant, do their own independent determination as to whether they think there's issues that they would like to intervene on. They do not have the presence in many instances of an attorney to assist them. They don't have access to the resources that the Applicant or the EFSEC staff has, and so I think that at a minimum that 30 days needs to be preserved. And I don't think that it's that detrimental to the Applicant.

In terms of some of the other efficiency mechanisms that have been proposed again, you know, I haven't seen that schedule or been able to match them up closely to know, but I am sure that there are places within the two schedules where room for greater efficiency can probably be worked in, but I would just like to note my objection to shortening that period by any length.

CHAIR LUCE: Thank you, Mr. Lufkin. Let's see. Ms. McGaffey, did you wish to respond to Mr. Lufkin?

MS. McGAFFEY: I would like to respond just briefly. Thank you very much. With respect to the early intervention issue, and I think it's important to understand that that decision has a very significant practical effect on the schedule. The current plan is that the EIS wouldn't be issued to the public until November or December. That would extend the schedule by several months if we had to wait until then to call for intervention, and I think in this case that's just not justified. Many people who intervene in the EFSEC process as the Council knows are repeat players. They're agencies. They're organizations that participate frequently and are familiar with the

process. As the Council also knows individuals living in Whatcom County have become very familiar with the EFSEC process over the past three years. I don't think this is a case where you're going to an area of the state that's unfamiliar or has never heard about EFSEC. Furthermore, with respect to this project in particular, BP has gone through a potential site study process, so there have been frequent meetings and outreach efforts to the community. So I think they're aware of the process that EFSEC goes through, as well as being quite aware of the nature of this particular project. So I don't think it's unreasonable to ask people to make a decision about whether they want to be involved as an intervenor at this stage even if it may be true that they find out more about the project as they become a participant. That's all part of the process. I guess the last point is the whole early intervention, late intervention process that the Council came up with on recent projects has a safety valve in it. If some new information comes out in the Draft EIS that somebody didn't know about and couldn't have known about ahead of time, that can be a basis for coming to the Council and asking for late intervention. But I think the Council's process that they came up in connection with Wallula and Starbuck to allow intervention early and begin that process has a significant practical effect, and I think as we saw in connection with Wallula there weren't any late intervenors because in fact people did understand the process and had information about the project early on. Finally, with respect to the time frame on petitions for intervention, the 30-day time frame that staff recommended isn't in the Council's regulations. It's not an established limit. It's not even the Council's consistent practice in the past, so I don't think we should assume that there was some basis for 30 as opposed to 21. The question for the Council should really be, will three weeks be a sufficient amount of time? And I think given the potential site study and the process that has occurred to date, for this project, 21 days is enough. Thank you.

CHAIR LUCE: Thank you. Any other comments from the public?

MR. JILK: Steve Jilk, Port of Bellingham. My question would be I hear staff saying that they feel that the application is sufficient, but not in terms of what you typically require would be considered complete. Is staff suggesting that the application is sufficient enough for potential intervenors to provide their petition based upon the status of the application?

CHAIR LUCE: Allen.

MR. FIKSDAL: Yes.

MR. JILK: And the sufficiency versus completeness is this something that the Council has done before?

MR. FIKSDAL: We have struggled with completeness a lot, and what we have to determine, and we've determined in the past that maybe that word complete is in the eye of the beholder. A lot of people have in the past felt applications were complete at a certain point and others felt that they weren't complete. We've seen that as the applications progress through time, the majority of the information is in the application and it is reviewed by our consultant. The adequacy of that information is appropriate, so that people have an idea of what the issues are, and they can make a determination whether they want to intervene or not. I think that's the question. Is the information sufficient to make that determination?

MS. ELLING: I have invited Marc Boule' who is our independent consultant to come and speak to you about where the project is in terms of review, and I think the main thing that I would like him just to discuss with you is are these dates good. Also, will he be able to say the application is sufficient enough to proceed in a week, which is the date we set, and then also is the October 11th date for administrative Draft EIS still a good date based on his knowledge.

MR. BOULE': Thank you. I'm Marc Boule' from Shapiro & Associates. We have reviewed the application and presented to the Council staff and to the proponent an indication of where we thought it was perhaps not completely adequate in certain subjects and where we had limitations on information for preparation of the EIS itself. The principal areas of concern relate to the cultural resources work, which has not been done at all, and I understand the Applicant is attempting to coordinate with the Lummi Nation to get that work done. It has not started yet, and they anticipate that it will be completed, I believe we have been told, by the end of October. The other area of concern is with regard to the wetlands work that has been done on this site. The project will entail the fill of approximately 30 acres of wetland. We were on site last week with representatives from the Corps of Engineers and also from the Department of Ecology. At the end of a two-day field trip, it was determined that the actual map of the wetland is an acceptable representation of the wetlands present on the site. However, the delineation report, which documents the work that was done that is presented on that map has a number of technical problems which I understand the proponent's consultant is going to start to work on. That was the second day of our site visit.

The first day of our site visit was to look at the potential mitigation that has been proposed by the proponent, and while I don't want to put words into either the representative from the Department of Ecology or those from the Corps of Engineers I think it would be fair to represent their comments as they did not feel that the mitigation was adequate for the impacts that would occur, and there were some concerns about the overall approach to the mitigation, as well as the use of the assessment techniques to determine what the real functions and values of the wetlands were on the site. So a number of concerns have been raised in that arena. Where that goes with regard to the scheduled EIS, we are still anticipating having the administrative draft of the EIS completed on the 11th of October. However, we don't know what the status of these missing pieces of information are or when we will be receiving them. And that's just very much an unknown for us as to when that information will be in place. At the moment the wetlands section of the EIS, I'm not sure how we would address it. We would have to say that there are impacts and that an adequate mitigation plan has not been proposed.

CHAIR LUCE: I think the question -- maybe I misunderstood the question. But the first question is will you be issuing a completeness letter in terms of the application on or about September 16th?

MR. BOULE': That is our plan. Yes, I think we can. I think we will probably have these wetlands and cultural resource issues outstanding at that time, but otherwise we will be able to issue a letter, yes, I believe so.

CHAIR LUCE: Allen.

MR. FIKSDAL: As with many projects, there are different levels of what people think are adequate or not. The company I'm sure will try to work with the different interested parties to try to get some stipulations. If not, then that goes to the Council for adjudication and then ultimately it's the Council's decision to decide what is adequate or what should be done with the project. Whether there is a level of information in an application for somebody to determine if they want to intervene or not, that's the question. Right now we've heard from Ms. McGaffey the information in the application is what they're proposing right now. They're still working on issues, and people can decide whether they want to intervene or not.

CHAIR LUCE: We did have a preliminary site survey here?

MR. FIKSDAL: Yes, we did.

CHAIR LUCE: That provides substantial information regarding the environmental impacts and other impacts associated with the project.

MR. FIKSDAL: It identified the types of information, the types of environmental issues that would be addressed and be necessary and should be looked at in the application.

CHAIR LUCE: Questions from the Council?

MS. FENTON: I have a question about the cultural resources survey information first. The information will not be complete until the end of October?

MR. BOULE': That's my understanding, yes.

MS. FENTON: And you're scheduled to complete a Draft EIS by the 11th of October.

MR. BOULE': That's the administrative draft. That would be the draft for review by staff and other interested parties, but it would not be the Draft EIS out for public review.

MS. FENTON: So there still would be time to incorporate the cultural resource information.

MR. BOULE': Yes.

MS. FENTON: And you're hopeful that the wetlands information piece will also be provided.

MR. BOULE': I'm hopeful. I've not been given a date estimate as to when the material will be complete and ready for us to see. As of last Thursday no dates were stated, and there may be new information. I don't know.

MS. FENTON: So if the Applicant wants to have a Draft EIS out at a certain point, it's important to make sure that the information is provided timely to you.

MR. BOULE': Yes, it is important for us; otherwise, we end up with an EIS which does not contain what is normally considered to be a reasonable amount of information to assess the impacts of the mitigating measures.

MS. FENTON: Thank you.

CHAIR LUCE: Other questions from Council members?

MR. SWEENEY: I have a new member question.

CHAIR LUCE: New member question.

MR. SWEENEY: It appears that we have had a practice of asking for intervenors before the Draft EIS is released to the public, but not knowing that when I was reading it, that was the first question that arose even before the Counsel for the Environment came up and talked. So now I'm curious as to how late intervention works, since that seems to be the process we allow is that if the DEIS is out there, and I hear the attorneys saying that, well, if there's things that wasn't out there before, if the DEIS discovers something new that wasn't in some piece of paper somewhere else that gives you the ability to late intervene. Or if I am a citizen and I happen to see the DEIS is the one that's at the library, and I don't have the box of application papers that has been produced so far, but it's the environmental impact statement that I read, and then I find reasons to intervene am I allowed to intervene in this process?

CHAIR LUCE: I think in the end that would be a decision that would have to be made by the Administrative Law Judge. However, the intent is all of this information is posted on the EFSEC web site. We've had numerous meetings with the public, and the intent is with all this early documentation available to have people identify their issues early on. If there's a new issue that arises in the DEIS that wasn't covered by the preliminary site survey or the application or the scoping meeting or any of the other numerous meetings that we had with the public in that area, then, yes, you can intervene late and raise a new issue. But it's not an opportunity to intervene for the first time and say, "Oh, I wasn't aware of what was going on." Because the EFSEC process by its nature bent over backwards to get the public involved early on in a very thorough and complete way.

MR. FIKSDAL: With the initial intervention we send out a notice to all of our mailing list interest groups that have been signed up, that we've gathered from the past 6, 10, 18 months we have been working on this project. So it's a substantial mailing list that we have for this project. We sent out the notice for intervention. When the DEIS is issued, we also send out another notice to saying late intervention is now open, you have so many days to intervene, and here's the conditions you can intervene on. Does that answer your question?

MR. SWEENEY: Yes. But you haven't actually heard anybody confirmed that the conditions are quite limited on late intervention; is that correct? It has to be new information in the DEIS.

MS. MAKAROW: It's the process that we used in two previous projects both at the time when we first issued the notice of intervention clearly states that if you're going to be intervening late, your intervention has to be substantiated by facts that have appeared in the DEIS for the very first time and that were not reasonably discoverable.

MR. SWEENEY: Maybe then to localize it or make it much more specific, a failure to provide the information on the cultural survey or meeting the wetlands mitigation would be reasonable for late intervention potentially. I know you all have the purpose to reasonably complete that information, but that is not information we have.

MR. FIKSDAL: It's up to the Council at that time to decide.

MR. SWEENEY: All right, and the ALJ?

CHAIR LUCE: The ALJ acts as our Administrative Law Judge, and the Council would decide based upon hearing arguments from all parties concerned.

MR. SWEENEY: All right. Thank you.

CHAIR LUCE: Anything else by any Council members? It's come back to this question. Allen, you were suggesting we need to make a threshold determination on whether to issue a notice for intervention assuming Mr. Boule' of Shapiro said that on the 16th they'll be issuing a completeness letter.

MR. FIKSDAL: Yes. What staff is looking for is the Council to direct staff to issue a notice of intervention once Shapiro informs us that they think the application is sufficient to proceed with the adjudication. We anticipate that Mr. Boule' will get back to us at least by the 16th, but we are not going to issue it until we get something from Shapiro.

MR. FALLIS: Mr. Chair, technically we're talking about a notice of hearing, the order that starts the adjudication.

MR. IFIE: I have a question for Allen. Was this a process we used in the Wallula project? Did we issue the notice for intervention when we received the completeness report from the consultant?

MR. FIKSDAL: Yes, we did. In that case, Jones & Stokes was our independent consultant and they notified us that they thought it was sufficient to proceed and then we issued the notice of hearing.

MR. IFIE: Another question. Was there any problem situated with that in the case of the Wallula project?

MR. FIKSDAL: No, there was no problem with it. I think as you heard from the Counsel for the Environment of Wallula also stated something similar to what Mr. Lufkin noted today prior to the Council issuing that notice.

MR. IFIE: Was the Counsel for the Environment concerned at that time by the date set by the experience that the Council had?

MR. FIKSDAL: I don't believe so.

MS. FENTON: Can we proceed with a call to hearing, the first hearing without having the cultural resource information?

MR. FIKSDAL: If someone feels there isn't sufficient information in the application or that they aren't sure of the information or they have questions about the information, then I think it would be prudent for them to intervene.

MS. FENTON: At this point what I thought I heard today was that none of the cultural resource work has been done, and it's estimated to be complete by the end of October. If we are getting a completion report mid September that leads me to believe then they probably won't have the cultural resource information. My question to you as the SEPA official is when you have a section of a report that's required not included, can we go forward without having it?

MR. FIKSDAL: The question is not a SEPA question. The issue for a SEPA official is the Draft Environmental Impact Statement. I think the question that you need to answer, is there enough information out there in the public between the potential site study, the application, and the information that we have at the different libraries and on our web site sufficient so that somebody could intervene, if they have enough information to determine if they should intervene or not?

CHAIR LUCE: And they could raise the cultural resources issue and any other issue. Ms. McGaffey.

MS. MCGAFFEY: Perhaps I could clarify a couple points on the cultural resources issue. The application does address cultural resources. We would like to have a number of different field surveys conducted to more thoroughly address that issue. Only a portion of those field surveys have been completed. What BP has done is retained the Lummis to do that work, since they're the parties most concerned with cultural resources in that area, and unfortunately they have not been able to complete that work as quickly as BP would have preferred. That's really the one area in which there's something missing in the application. In our view the wetlands stuff isn't missing, there's just disagreement about whether the mitigation proposal is sufficient to address the concerns or not. In our view, while we would like to be in a position of providing the Council with more cultural resource information right now, we believe that the information in the application is sufficient to alert people who would be concerned about cultural resources at the project site which is, of course, on BP property next to the refinery. If people are concerned about that issue, I think they can raise that issue now. Historically that has not been a big issue of concern on projects at least that I've been involved with, but it's work that we want to complete. And if we reach the point in the adjudicatory process that not having that information is creating a scheduling process, I think we should address that at the point when we get to that point rather than assuming that there's a problem now. We do understand that in connection with the federal requirements of the EIS, some additional cultural resources information is going to be needed I think for Shapiro to complete that work. But as you all discussed in your colloquy earlier, we are hopeful that that can be incorporated into the EIS during the review process, if it's not done prior to the October 11th date.

CHAIR LUCE: Some information in hand, more information to come. It depends upon the Lummis completing the Applicant's studies. That's what I heard. We are back to the question. Do we have a motion to allow the staff to issue the notice for hearing? We will reserve the specific dates about 30 days or a week. Do we have that motion to allow them to issue the notice of hearing once the Shapiro firm gives us the completeness letter on or about the 16th of September?

MR. IFIE: I so move.

CHAIR LUCE: Is there a second?

MR. FRYHLING: I second it.

CHAIR LUCE: Discussion?

MS. FENTON: The question I have is, I asked Allen specifically if he was going to make the call, and I thought he said the Council made the call as far as when to call for the hearing. But the motion I thought I just heard was that we were allowing staff to make that determination, so I just need clarification.

CHAIR LUCE: Council will make that decision to issue a notice for hearing once the Shapiro group has given us a completeness notice.

MS. FENTON: Then that's what the motion is?

CHAIR LUCE: That's what the motion is. Then we've got to drill down on the time lines and reconcile the white, pink, and purple sheets to our mutual satisfaction, and I've heard loud and clear the Counsel for Environment's question about 30 days as being reasonable, and I think Mr. Carelli has done an admirable job in trying to compare what we did in Wallula to what the current situation is.

MR. FALLIS: Mr. Chair, now I'm confused about the motion. I thought the motion was that once the letter is received from Shapiro, then staff performs the ministerial duty of sending out the notice of hearing, Council having determined as a matter of consent that that's the appropriate time to do it.

CHAIR LUCE: That's also correct. I think Jenene said isn't it the Council that makes this decision, and my understanding was through this motion the Council is so acting to make that ministerial decision, but the staff will in fact carry it out. What question does that raise Counsel?

MR. FALLIS: None. I think that's consistent with what staff did in the Wallula case.

MS. FENTON: Thank you for the clarification.

MR. JILK: Could somebody repeat the motion again.

MR. FIKSDAL: The motion, if I may reiterate, was to have the Council authorize the Council staff to issue the notice for hearing once it receives information from Shapiro that the application is sufficient.

CHAIR LUCE: The completeness letter.

MR. FIKSDAL: Yes, and we expect that information by September 16th.

CHAIR LUCE: We'll get a letter before we do that.

MR. FIKSDAL: Yes.

CHAIR LUCE: Is that clear?

MR. JILK: Yes.

CHAIR LUCE: Do I have a call for the question?

MR. CARELLI: Call.

CHAIR LUCE: Mike, would you call the roll, please.

MR. MILLS: Department of Community, Trade, and Economic Development.

MR. FRYHLING: Yes. I vote yes.

MR. MILLS: Department of Ecology.

MR. CARELLI: Aye.

MR. MILLS: Department of Fish and Wildlife.

MS. FENTON: Aye.

MR. MILLS: Department of Natural Resources.

MR. IFIE: Aye.

MR. MILLS: Utilities and transportation Commission.

MR. SWEENEY: Aye.

MR. MILLS: The port is not a voting member. Chair, Jim Luce.

CHAIR LUCE: Aye.

MR. MILLS: Motion carries unanimously.

CHAIR LUCE: Thank you very much. Motion has carried unanimously. Mr. Fiksdal, do you have advice for us with respect to how to proceed on aligning the different schedules, time lines that have been set forth or recommended by different parties or do you want to take some time to reflect on that and give us advice at the executive committee meeting?

MR. FIKSDAL: I think the only question that the Council or that staff would have is the period of time for issuance of that notice. When does it close? The Applicant has suggested that it be three weeks, and we have had 30 days and Counsel for the Environment has suggested that it be 30 days, so that would be the only question I think that needs to be resolved. Is there a preference by the Council on how long do you want that notice to be issued?

CHAIR LUCE: Council?

MR. IFIE: Again, I go back to the Wallula project. What was the time frame that we used for the Wallula project? Was it 20 days?

MS. MAKAROW: Thirty days for first round of intervention, and then 45 days for late intervention because we made it coincide with the public comment period on the Draft EIS.

MR. IFIE: A follow-up question. Has there been less than a period of 30 days in the past?

MR. FIKSDAL: I don't recall. I couldn't tell you.

CHAIR LUCE: Mr. Carelli. Then I would move we allow intervention to run for a period of 30 days commensurate with what we did in the Wallula project.

CHAIR LUCE: Is there a second?

MS. FENTON: Second.

CHAIR LUCE: Discussion among the Council?

MR. FRYHLING: Question.

CHAIR LUCE: The question has been called for. Mike, please call the roll.

MR. FIKSDAL: I think you can just do a voice vote.

CHAIR LUCE: All in favor say Aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: Thank you. Any opposed? Thank you very much. Do we have anything else to discuss regarding the BP Cherry Point project?

MR. CARELLI: Mr. Chair, before we move on, there is one other area on the schedule that I would like to at least throw out an idea for staff and other Council members to consider, and that is the period following the date the Draft Environmental Impact Statement is published to the date that the deadline for petitions for late intervention are accepted. And I would suggest that that period has to be at least 30 days as well, and if possible maybe making it coincidence with the SEPA-NEPA hearing process as we used in Wallula.

CHAIR LUCE: That's the 11/11/02 to 12/2/02?

MR. CARELLI: Yes.

CHAIR LUCE: We answered all the questions we have to answer today. Let's not answer any more questions. Mr. Carelli, that's something for the Council to think about and the staff.

MR. FIKSDAL: Yes.

MS. ELLING: I just want to close by saying I think there is two outlying issues, and, of course, one is how we proceed from here on the adjudicatory process, but the other one is going to be on the EIS, and I assume we will bring that before the executive committee on Monday.

CHAIR LUCE: Thank you very much everyone. That concludes the matter on the BP Cherry Point application at this time.

MR. FIKSDAL: Mr. Sweeney is getting ready to leave. I think we should recognize and explain that Mr. Sweeney has been appointed by the Utilities and Transportation Commission for the foreseeable future, but Mr. Showman is staying on for the projects that he has been working on. That's why you see a switch in chairs here. They don't get two votes.

CHAIR LUCE: Thank you.

ITEM 7: SATSOP COMBUSTION TURBINE PROJECT

<i>Phase I – Construction Status</i>	<i>Laura Schinnell, Energy Northwest</i>
--------------------------------------	--

CHAIR LUCE: The next item on the agenda. We've revised. We'll take out of order the Satsop Combustion Turbine Project. Laura, how are you?

MS. SCHINNEL: I'm just fine. Thank you, Chair and Council Members, and I thank you as well for accommodating my schedule. Andy McNeil asked me to provide you with an idea of the types of work that we're still undergoing at the site in lieu of the announcement that was made that construction was being altered on the site. I don't know that we have a good word for that.

Some of the activities that we are continuing to do, we have approximately 136 Duke Fluor Daniel contractor and subcontractor staff on site. They're continuing to do work on the combustion turbine generator, the gas turbine, the steam turbine generator, the heat recovery steam generator, auxiliary boiler, and the cooling tower. The types of work that we are doing would be maintenance of the asset and anything of a safety nature. For example, we are completing permanent piping hangers rather than leaving the pipe hanging on chains. Other work that has been going on we've completed a couple of tanks fills. We have also been working on some power distribution. We've also been working on the condensate pumps. Other work going on related to the project, Williams is continuing to work on the natural gas pipeline, and that is still scheduled for completion by November 1st. Bonneville Power Administration is continuing to work on their transmission towers, and the work on the Ranney wells for the Grays Harbor Public Department Authority is continuing to support the Boise project, which will be going commercial sometime in the next month or so.

CHAIR LUCE: Thank you.

MS. SCHINNEL: In terms of a decision, I might add, we still don't have any word when a decision will be made by Duke concerning the project. They are continuing to review market decisions, and the decision will be based on when they believe the upturn will occur.

CHAIR LUCE: Thank you very much. Any questions for Ms. Schannell?

MS. FENTON: Last meeting you said there's work on Ranney wells, and then you just indicated that it was the PDA who was undertaking the work. I was under the impression that it was Duke that was doing the work for the Ranney wells.

MS. SCHINNEL: In relation to the memorandum of understanding and the draft water agreement a Duke contractor is actually performing the work, but the schedule was intended to meet the PDA's needs for water delivery by September 1st; although, it actually turned out to be September 3rd that we had to deliver water to the PDA.

MS. FENTON: So the work was associated with PDA not the Satsop facility.

MS. SCHINNELL: Well, it's a joint work because the 9,000 gallon per minute pumps were changed out to 5,400 gallon per minute pumps which would accommodate the PDA and the Duke project. Our need for water delivery was not until later in the year.

MS. FENTON: Thank you.

CHAIR LUCE: Thank you. Any comments from members of the public?

<i>Phase II – Review Postponed</i>	<i>Allen Fiksdal, EFSEC Manager</i>
------------------------------------	-------------------------------------

MR. FIKSDAL: Before you, you have a letter from Ms. McGaffey that asks the Council to suspend review of the Phase II project, and we issued the press release after the receipt of that letter saying the Council would suspend their review. I think this is the first time the Council has had a chance to formally meet. I would like to have the Council affirm that they have suspended the review of Phase II.

CHAIR LUCE: We're affirming together. All right. Anything else?

MR. FIKSDAL: I might mention before we leave that item that Ms. Lamb, who represents the Port of Grays Harbor, this will probably be her last meeting here until the company tells us to resume review of the Phase II project, so we thank you very much, Ms. Lamb, for coming and we will be in touch.

MS. LAMB: Thank you for the opportunity, and I would just like to assure the citizens of Grays Harbor County that this Council has their interests at heart. I am very impressed with the work that the Council has done. I would have had no opportunity to observe, and I am not one who goes around and makes my judgments without having something that I believe in. I was honored to be with you, and I hope you call me back soon.

CHAIR LUCE: We hope we call you back soon too

MS. LAMB: Thank you. Bye-bye.

ITEM NO. 6: CHEHALIS GENERATION FACILITY

<i>Consideration of Greenhouse Gas Offset Strategy and Plan</i>	<i>Liz Thomas, Chehalis Power and Chuck Carelli, Ecology</i>
---	--

CHAIR LUCE: All right. We will proceed with the next item. The next item being Chehalis Generation Facility, consideration of greenhouse gas offset strategy and plan.

MR. BATES: Steven Bates with Chehalis Power. First, I would like to introduce Duncan McCaig. He's going to be the plant manager for the Chehalis Power Facility, and I will also be staying on with the project as Senior Project Engineer.

MR. McCAIG: Thank you. It's a pleasure to be here. I look forward to working with all of you in the future.

CHAIR LUCE: Thank you.

MR. FIKSDAL: You're taking Tom Schneider's position; is that correct?

MR. McCAIG: Actually not. Tom Schneider is the site manager through the construction period. My role is the plant manager, so Steve and I will be responsible for the 20-person staff operating the plant.

MS. THOMAS: Of course, I'm Liz Thomas, counsel for the project. Back on the CO2 plan, I believe you have before you a plan dated September 5th, and this is the product of six months of work and continuing dialogue between Chehalis Power and some Council members and some other people who are interested in the plan. I know that everyone is at least a little bit familiar

with the plan, so I won't go over it in a lot of detail. The project certainly appreciates the willingness of the Council members to revisit this plan a number of times and share a number of ideas about it. I thought today what might be most useful is if I just touch on some key issues that had risen over the past few weeks and how this version of the plan resolves them. And then we would be available to try to respond to any questions that may arise.

The revisions and clarifications that are in the September 5th version of the plan that relate to recent discussions involve three areas, the area of carry forward, the area of a consultant, and the area of the rationale for the plan. In terms of the carry forward, I want to clarify two things about the carry forward. One is it would apply only to the 15 percent of the project's total CO2 offset obligation that the project is authorized to request EFSEC approval for using on local projects. You will recall that under the site certification agreement Chehalis Power has a ton-for-ton offset obligation. To the extent that project emissions exceeded baseline that represents the project when it was a 460-megawatt project, then the company has to offset tons that exceed that baseline. The baseline is 1.8 million tons of carbon annually.

The plan has gone through some metamorphoses regarding the local element and where that the local element could comprise up to 15 percent of total CO2 offset obligation on an annual basis, and with that local element on a case-by-case basis the company can come in and ask the Council to approve the company's participation in a local project. Only as to these local projects the ton-for-ton obligation would get converted into a dollar figure, and that dollar figure would be based on proxy price that the company recalculates each year that composes a local project. The proxy price contained in the plan right now is \$1.75, and that looks like the first year of project operations.

As to the carry forward, I think it may be easiest to explain by just using an example. Let's assume that in year one the offset obligation is 1,000 tons, so a minimum of 850 tons have to be offset on a ton-for-ton basis. The company has the option of coming in and asking the Council to approve up to 150 tons for local projects. Let's assume in year one the company doesn't ask anything for local projects. In that case the company has to offset the full 1,000 tons for year one on a ton-for-ton basis. Then in year two assume it's again a 1,000 ton offset obligation, the way the carry forward would work is that in year two the company could come in and ask EFSEC to approve up to 300 tons to be satisfied through the local element. In other words, each year the company will have to satisfy the entire offset obligation, but if it doesn't allocate any percentage in a given year to local projects, it could come back in a following year and essentially ask the Council for permission to catch up through applying the percentage from the previous year in the following year. So that's the carry forward.

The second issue that's been under discussion in the past few weeks has to do with the use of consultants for certain elements of the plan. And we understood that there were concerns about whether the consultant preparing the recommendations regarding quantities of CO2 to be offset by a particular project regarding the proxy price and regarding the results in annual reporting.

There was some concern about the independence of that consultant, and we do understand that issue I think, and we wanted to respond to it. Our suggestion, our concern is that we not double up on the consultants; that we not run up the transaction costs by having duplicative consultant efforts in terms of quantifying CO2 for the offset by a particular project and that sort of thing. Our suggestion in order to ensure that the consultant who is asked on this work is somebody that you're comfortable with and adequately independent from company management is that before a consultant is chosen the company come to the Council and ask the Council to pre-qualify someone. So, for example, we have our 1,000 ton obligation for year one, and the company

decides they would like to offset that through a project somewhere in say Canada. We'll need a consultant, an expert to verify the number of tons that a particular project will actually offset. Before we commission anyone to do that calculation, we would come to you with a suggestion for a name and qualifications, and you would consider whether you found that person acceptable, and if you didn't, then we will have to find someone else you would find acceptable. I guess in that way we are hoping that we can find a single consultant who can both serve as your consultant and our consultant with the Council being comfortable that the person has an adequate level of independence; that the person really will function as your consultant.

The third issue that's come up is some of the rationale of the plan. The plan both contains action items, and it also contains an explanation of where the action items came from, discussion of the nature of the problem and the sort of value that offsets, timing of offsets and that sort of thing, and we just wanted to make clear that we included the rationale in there, so the Council could see why the plan contains the action items that it contains. But we are not asking that you endorse our expert's analysis. Our understanding is that if you approve this plan, you're approving us to take the actions called for by it, but you're not necessarily approving the rationale contained in it. And those are the issues that I'm aware that have been under discussion in the last few weeks. My closing comment would be a plea to remember that I think Chehalis Power has been different from all of the other projects that come before you with respect to CO2 mitigation. Our CO2 obligation is the product of an amendment proceeding, and as far as I know nobody else has poised to go through. We are obliged to offset tonnage above a certain baseline, and in that respect I think we're going to be unique, so at least in our minds you're not setting much, if any, precedent in whatever actions you take on Chehalis Power. Thank you very much, and we would be pleased to try to answer any questions you may have.

CHAIR LUCE: Thank you. Council questions?

MR. CARELLI: I don't know that I necessarily have questions but sharing my views for other Council members. The carry forward concept gives me some problem, and our intent was to offset greenhouse gases, and to the extent that we can that is the intent. My suggestion that in any given year there is not a local project worthy of devoting the proxy dollars to that the company would offset ton for ton on the worldwide market as they have suggested.

Second, the consultant of choice, I too agree that if we can come up with one firm that could respond to both of our organizations that would be good. I would like to suggest the possibility of identifying two, three, four firms and jointly interview them, and to the extent we can agree on a single firm to represent our organizations.

Based on the problems I have with carry forward, there are a couple of sentences that need revision. Selection of local offset projects on Page 10, the last sentence of the first paragraph needs some modification and likewise on Page 11, under that same section the last paragraph, likewise the last sentence needs some modification. Finally, there are two portions in the document, and Ms. Thomas you alluded to the Council didn't necessarily have to buy into what it says. I suspect that at some point in the future we are probably setting precedent because somebody is going to quote back to us. You did such and such and you accepted this plan, and it included this type of language, etc., this process.

And my problems are on Page 5 under the background, lack of a comprehensive state, national, and global policy. While that's true, I don't see how that necessarily provides background to this particular project, and the first paragraph under the background section I don't think is appropriate. And if that goes away, likewise Appendix B that it references probably also does not belong here. I think the approach that has been put together with those concerns is a good

approach. It's one I think that is probably part of the original recommendation to be able to deal with local projects, and it's one that I would like to see the Council consider. Having said that, I am of the opinion that it would require amendment to the site certification agreement because the site certification agreement very clearly says that it is ton-for-ton mitigation and does not allow us into the area we are talking about with respect to local projects. I would support an amendment to the site certification agreement that does allow us to use local projects. I think it benefits the company, I think it benefits the environment, and I think it benefits the local community.

CHAIR LUCE: Thank you. I do appreciate the subgroup here of Mr. Carelli, Ms. Fenton, and Tony Ifie working on this as a subcommittee contact, and I appreciate the work that all of you have done. Jenene, any comments?

MS. FENTON: I concur with everything that Mr. Carelli said. I feel very strongly that the SCA requires ton-for-ton offsets. I think the company has done a very good job of putting together a reasonable approach on how to deal with local projects, and it would have made me feel a lot easier if that had been proposed during the hearing, but it was not. I too support the fact that we need an amendment to the SCA to justify allowing up to 15 percent of the offset requirements being used locally because it will not necessarily reflect on a ton-for-ton offset.

The other concern I have, and I am not sure if Mr. Carelli indicated this one. It is our understanding that the proposal in front of us is that the 15 percent if a project is not identified in a given year that there's a requirement to offset on a ton-for-ton basis. The company as I understand it is proposing that in a subsequent year that they could come back and ask for the use of that 15 percent that hadn't been used. I don't support that concept. If there's a valid project, I would support the project being funded. If the company comes in and indicates there is a project that may take more than one year, it's worth the funding, I would support that concept. But to just have this overall cap of 15 percent for the life of the project, I wouldn't support. But other than those, those are the only adjustments that I would make.

CHAIR LUCE: It all depends on how you define carry forward. If a project comes in the first year and it's a four-year project and the 15 percent a year that would be within the purview of what you would contemplate as being reasonable.

MS. FENTON: Correct.

CHAIR LUCE: But you don't want to just save up the 15 percent each year until seven years out. Is that a fair summary of what your situation is?

MS. FENTON: Right.

CHAIR LUCE: The sharing of a consultant, we discussed the concept of approval of local projects by the Council?

MS. FENTON: That's the proposal in front of us.

CHAIR LUCE: I guess I would endorse that. I think it's important from a policy perspective that we continue to have that ability to review local projects. Mr. Ifie, did you have some comments?

MR. IFIE: Yes. I agree with most of the comments that Chuck and Jenene have brought forward, but the only part I don't agree with Jenene or Chuck is on the 15 percent local projects. If the decision is made down the road that an amendment to the SCA is required, then my proposal would be that will put the percentage of local projects on the table as well, and, you know, the idea of being that it would be local projects doesn't have to be just any project. It would be approved by the Council. It would be proved to have significant greenhouse gas mitigation impacts. But my argument is that there are projects that being local where the

environmental costs has been experienced rather than moving a project to somewhere else. So I will propose if an amendment is required to the SCA that we consider increasing the percentage to 30 percent or even to 100 percent if that's what the record will support at that time.

CHAIR LUCE: All right. I think I understand what's going on so far. Comments from Council have been asked and offered. Any response, Ms. Thomas?

MS. THOMAS: Yes. I want to make sure that I am understanding Mr. Carelli's first comments correctly regarding how the carry forward would work if it were approved. It is the company's understanding that every year it must satisfy 100 percent of its offset obligation one way or another, so that if EFSEC doesn't approve a local project in a given year, then the company goes straight ton for ton that year. So we weren't carrying any portion of the obligation forward. It was just the notion of the carry forward was just to shift from the balance as between the local and other in subsequent years if there aren't local projects in earlier years.

MR. CARELLI: Once we've gone beyond year one and the company has offset ton for ton on a hundred percent of the increase, that amount is set aside, is off the table, and we start over the second year. If during the second year the company identifies a project that could conceivably amount to 30 percent, that 30 percent could be taken first during the current year and the subsequent year for the following year.

MS. THOMAS: Then that sounds like that's also consistent with what Council Member Fenton was saying.

MR. CARELLI: Yes.

MS. THOMAS: I think I see the logic there, and it's certainly wonderful to sort of consider the past year as done. My concern is really just a practical one. The project operation may vary a bit from one year to the next. We always know what we did last year. We don't necessarily know what we are going to do next year. It will vary according to hydro conditions, economic conditions, what the demands for the project output are, so it's conceivable that with diminished operations the amount to be offset would also diminish, so we can't really predict with any certainty how many years it would take to use up, if you will, 15 percent allocations. It may not be completely unworkable, but there's just a lot of uncertainty to it.

Let me try another example just to make that clear. Assume year one 1,000 ton obligation, no local project. We offset 1,000 tons, ton for ton. Year two we find a project. Year two we also have 1,000 ton obligation and we find a local project that would cost 300 tons. As I understand it under your approach of 15 percent we could count it toward the obligation in year two and future years but not for year one. If we knew that year two was going to look just like year three, that would be pretty straightforward. But we don't really have any way of knowing that. Project operations can change a lot depending on different conditions. So the concern I have is that we don't know whether if we do the project that costs 300 tons whether that exhausts the local project share for years two and three; years two, three, and four; year two and part of year three. It's just a bit awkward. It may not be completely unworkable, but I think it requires more math, if you will, and it may require more years of reporting. So that was my response on that particular issue.

And then, Council Member Ifie, I guess I wanted to see if I understood you. As to whether a site certification agreement amendment is necessary, it was our position that we don't think it is because the plan does require a significant greenhouse gas component for any local projects which we think should result in approximately ton for ton somewhat short perhaps but not horrendously short given that only 15 percent of our obligation can be satisfied that way. Further, we felt that we need not obtain a site certification amendment prior to your approval of

the plan. That if you do feel that a site certification amendment would be necessary for any local projects to be done due to the shortfall on the ton-for-ton basis, we'd ask you to go ahead and approve this plan today, but with the condition that before we can come in with any local projects we have to seek an amendment of the site certification agreement and obtain it. And I am not sure, Council member Ifie, if that's consistent with your comment or not.

MR. IFIE: My comment was more on the issue on the condition that an amendment is required to the site SCA. My contention is that I will ask that the percentage of local projects be put back on the table. Instead of assuming 15 percent, that we put it on the table and discuss the merits of different percentages. It could be 30 percent, it could be 10 percent, or it could be 100 percent.

MS. THOMAS: I think that certainly is possible. If we need to come in for a site certification agreement amendment regardless, then it seems to me we could open up the percentage issue. And if the number had changed, then we could go back and amend the plan with the Council's approval.

CHAIR LUCE: Any other comments from Council members? Any other comments from the Applicant, Chehalis Generation? Comments from the public? Wow, we've got a number of hands. Yes sir. State your name and address and tell us what's on your mind.

MR. MUDGE: My name is John Mudge, M-u-d-g-e, and I'm president of the Critical Issues Council, and we were the only non-agency intervenor in the Chehalis project. The mitigation thing comes as a surprise, had I not shown up today I still wouldn't know anything about it. I would think that as a matter of either public outreach or a legal fact that the parties need to be notified. We should have some information mailed to us on a significant item like this, and it hasn't been mentioned whether other agencies have been notified or not, particularly Department of Ecology and the Counsel for the Environment. He's probably going on to other things at his AAG job, and he may have forgotten Chehalis, but there seems to be somebody in the AG's office as a Counsel for the Environment should be advised also if he hasn't already, but I know we haven't been. And I just want to express my objection to that as it does seem highly inappropriate.

CHAIR LUCE: Thank you. Nancy Hirsch, Northwest Energy Coalition representative.

MS. HIRSCH: Good afternoon. Thank you for the opportunity to present public comments. My name is Nancy Hirsch, Policy Director for the Northwest Energy Coalition. First, I want to say that we support many elements of this mitigation proposal from Chehalis Power. It's a pleasure to see the Council moving forward on its first CO2 mitigation proposal. That's very exciting. We mostly support the proposal, and we have some concern, some of which have been addressed by the Council members already, and we want to echo some of these concerns and raise just a few additional points that we think can be modified in the current plan and still approved today for action.

On the ton-for-ton basis we think that that's an excellent approach for the majority of the emissions rather than trying to establish a price per ton, which is very difficult to do as we are finding in other forums, so we appreciate that approach and think it's a smart way to go. We also think that allowing a 15 percent offset for local projects is an excellent proposal. There are a lot of local projects that can use support that do offset greenhouse gas emissions, and we would like to see those move forward, so we support that.

On some of the issues that we think need strengthening in the plan, first is the calculation of the actual emissions doesn't seem to take into account degradation that may occur over time in the operations of the facility. Basically I believe what the Applicant is proposing, what the company is proposing is just to look at fuel use, and yet the actual physical heat rate and there are other

factors within the operation of the plant itself which may fluctuate emissions regardless of fuel use. Thinking about your car, put in the same gallon of gasoline. If it's not tuned up, it emits more emissions than if it is tuned up, and so we would like perhaps a more sophisticated formula for determining what actual emissions are each year, and looking at what EIA requires for its submissions may provide a little bit more accuracy in what actual emissions are.

We support Council Member Carelli's issue on the consultant and his proposal that perhaps the Council and the company jointly interview proposed consultants and come up with a short list of two or three that would work and then select one from there. When the developer proposes a list of generic project types that they want pre-approval for, land management, for example. We would just point out that projects can vary tremendously in their effectiveness, and we would encourage the Council to look at specific projects on a project-by-project basis rather than a generic. I mean preplanting certain trees are more effective than other trees at sequestering carbon, so to just blanketly approve a category doesn't exactly make sense to us. We recommend the list of criteria for selecting projects, which I believe is in the plan, but that should be applied to each project as opposed to a generic approval.

We agree with Council Members Carelli and Fenton on the cap on 15 percent and their concerns about carry forward. We think perhaps a year or two carry forward might make sense but not long-term carry forward because you want to make sure projects get into the ground sooner rather than later. Some flexibility is important because projects take time to get developed as the City of Seattle is finding out currently. Their effort to invest in local projects is taking longer than they had anticipated, and they're pushing and moving forward, but it still is a slow process and may run into future years.

We also wanted to clarify that the purchase of greenhouse gas mitigation projects through the Climate Trust will occur at the actual cost of mitigation as opposed to the 75 cents, the fixed monetary rate 85 cents a ton that the Climate Trust has in Oregon standard. But that what the company is giving to the Oregon Trust or Climate Trust is being done for a ton-for-ton basis based upon whatever the market price is at that time. It's not entirely clear in the plan that that's the case. It could be read or interpreted that they would basically buy mitigation at the Oregon standard price, and that's not what you approved in your site certificate. So we just think there could be some clarifying language in there.

Also we agree with Council Member Carelli that some of the discussions in the plan about national policy and hypotheses about timing for when emissions reduction would be required on a national basis or state and local basis that that's kind of editorial language that should be taken out and we don't want to imply that the Council endorses that by endorsing the plan. Again, I thank you for the opportunity to provide comments and appreciate and applaud the Council for moving forward with this proposal and the company for putting forward a thoughtful plan. Thank you.

CHAIR LUCE: Thank you. Questions for Ms. Hirsch? Thank you very much. Appreciate you coming here. Mr. Lufkin, and we've got Mr. Usibelli behind him. And while you're coming forward, Mr. Lufkin, I want to note the Council has received a letter from the League of Women Voters, Donna Ewing and Sue Minihan, endorsing the company's proposal with some minor modifications, so that will be entered into the record.

MR. LUFKIN: Thank you, Mr. Chairman. I would just like to start off by thanking Ms. Thomas for addressing my concerns. She's been very helpful in getting back with me, and I appreciate the effort that she and Chehalis Power have put into this plan, in particular in addressing some of these concerns. I am with the Attorney General's office, and I was not the

Counsel for the Environment on this project, but I have kind of picked up the reins and have been following this Chehalis greenhouse gas strategy, and so I think you can be assured our office is actively involved. I had a couple of comments, and I think most of them have been addressed, but I did just as a matter of record want to state them real briefly here.

The first one has to do with the rollover. I think there's been a couple different concepts put forward here. I know Council member Carelli and Council member Fenton had some ideas. I think one of the things that needs to be done regardless of how the Council ultimately resolves this is that there needs to be clarification in terms of what the strategy actually states. Ms. Thomas gave some examples of how she believes that the plan would work, and I guess my comment is that I am not a hundred percent clear that the way it's written in here adequately explains that process that is actually being proposed, so that's not so much criticism as a need for clarification.

In terms of the substance of the rollover itself, I think that if we're going to have some type of rollover, Counsel for the Environment recommends that there needs to be some discount. If you rollover 15 percent from one year to the next, or even are allowed to utilize 30 percent, it's not so much a rollover. But if you're allowed to utilize that unused portion from year one to year two, there is still a detriment in terms of overall CO2 offsets, and the reason being is that you're not getting that ton for ton. The local projects I think as everybody acknowledges you're not going to get that overall ton for ton, so there should be if there's allowance for either rollover from year one to year two or utilization of a larger percentage in year two, some type of discounting. And at this point I haven't given it too much thought. I am sure Mr. Usibelli could offer some comment in terms of how that type of discounting could be established.

The second issue has to do with prequalification of an independent expert, and that was a concern of mine, in particular because I wanted to just clarify that if we are actually seeking an independent expert that that expert should probably be somebody that the Council has had the opportunity to either independently review or in the alternative that expert should not be somebody that has advocated in previous adjudications for one party or the other. But I support Mr. Carelli's proposal that perhaps two or three, four could be selected and interviewing could be done and then a selection made.

In terms of the local project selection, there has been some mention in terms of the fact that there's just a list of different types of proposals or projects that would be considered significant greenhouse gas, would be considered significant offset, and I thought that perhaps one option would be to insert some language in there to explain what or how the selection process would work. And what I'm suggesting is some language that states that in selecting local projects priority will be given to those projects that achieve the greatest reduction of sequestration or displacement at the lowest cost per ton, and that would provide at least a little assurance that that is being looked at; that we're getting the best bang for our buck.

Finally, as has been noted by several different individuals, there is some editorial language. I made note particularly of some language on Page 6 regarding the global long-term nature of the climate problem. Some of the language that's included in there has been issues that have been directly at issue in previous hearings, so I would support removal of that language when the final plan is approved. Thank you very much.

CHAIR LUCE: Mr. Usibelli, it's nice to see you.

MR. USIBELLI: Good afternoon. My name is Tony Usibelli. I'm representing the Energy Division of the Office of Trade and Economic Development. For the record, we were an intervenor in the Chehalis proceedings and would also like to essentially echo many of the

comments the Counsel for the Environment has made. We would like to extend our thanks to the Applicant, and in particular to Liz Thomas for being so responsive in allowing us the opportunity to make comments on several of the drafts. We think that the 85 percent ton-for-ton offset and the 15 percent approach is a reasonable approach to the offsetting of greenhouse gases. We are particularly pleased by the nature of increasing the role for an independent consultant to provide advice to the Council, and we think that's a workable solution, whether it's through a series of interviews or whatever process. Having a consultant that provides independent assessment we think it would work well for the Council. I won't reiterate many of the other comments that have been made but will just mention a couple of points.

We would agree with the previous commenters that there are a number of elements in the background material that the Applicant did indicate would not be something that would be formally adopted by Council. We think that in that case there really isn't any need that that actually be included in the process. It could be background information that is not actually adopted as part of the agreement itself even though I would echo Mr. Carelli's comments that even though that is apparently the case when it's adopted much of that language does come back again or could come back again in later proceedings.

And, finally, on the issue of the carry forward of the 15 percent from year to year, I wouldn't say that we have a strong opinion on that. We would certainly say if there is significant carry forward, one of the issues that the Council may want to consider is that they would give stronger weight in future years, if there's significant carry forward, stronger weight to the ton-for-ton offset. And based on the Counsel for the Environment's offer, I guess we're available should the Council like us to do any evaluation of some of the various options, including discounting and other kinds of approaches. So we will make that offer to the Council if that would be of some value. So with that, again, we would generally support the approach being proposed here with the caveats that we've raised and some of the other intervenors have raised. Thank you.

CHAIR LUCE: Thank you. Other comments from the public? Other comments from the Applicant having heard what the public has to say?

MS. THOMAS: Thanks for your continuing patience and thanks for so many looking closely at this. Let me try to touch briefly on some of the comments. As far as the calculation of emissions, we feel fuel use is a reasonable proxy for efficiency. If the plant is operating less than efficiently, it's going to be using more fuel. And so we feel that the calculation here does give a fair read on the tonnage of the CO₂ to be generated and therefore on the tonnage of CO₂ that is being emitted and therefore on the tonnage that we're suppose to offset. So we feel that trying to incorporate additional elements like heat rate and other things would unnecessarily complicate the calculation without doing much better of a job of showing how many tons we're obliged to offset.

As far as the joint interview, I'm sorry. I forgot to mention earlier. I think that's fine. That makes total sense in terms of identifying consultants that are acceptable for all purposes. The generic projects listed for preapproval, I think that that shouldn't be a concern. The plan already essentially recognizes that some trees may work better than others by requiring there to be a calculation of the offsets from each project that the company gets involved with, so in that way the company will be pushed toward trees that work better and will be giving you an offset calculation based on the particular trees in the particular location that they're going to be put. I understand the concern, but I think the way that the plan is written it already addresses it.

A couple comments on carry forward. One was that it shouldn't be allowed to go on for a long time because you want projects sooner rather than later. I don't think that limiting the duration of

carry forward helps with that objective. I think if the duration of the carry forward is limited, it just means you have fewer opportunities for local projects. The company's experience so far is that there aren't an awful lot of projects that look very attractive from a greenhouse gas standpoint, and it's not all clear that the company would be in every year with the local projects. There just don't seem to be that many of them that have the greenhouse gas component, and I think if you limit the duration of carry forward, all you really do is limit the likelihood that the company would be able to participate in a large scale project that really does have significant greenhouse gas benefits.

The other comment in that vein was the comment regarding some sort of a discount as I understood it for participation in local projects. You know, again, that doesn't make sense to us. I think our sense is that if you discount -- our participation in local projects is at the proxy price. The proxy price is based on a market analysis and calculation. It's not 80 cents a ton. Right now we think it's \$1.75, and we will be reporting to you in the future what it seems to be. If there is a discount from that, that just again discourages participation in local projects. As it is, no more than 15 percent of the commitment would be satisfied through local projects. If you discount that 15 percent value even further, you're just discouraging local projects. We don't really see the point to that.

As far as the purchaser from the Climate Trust, I don't know where the notion came from that it could be at 85 cents. It's not. We heard the Council loud and clear that that is not the approach for Chehalis Power. The purchase from the Climate Trust will be made at whatever price the Climate Trust sets on its offset. My understanding from my conversation with the executive director is that should we go to them to satisfy our greenhouse gas obligation, we would go and say, "We would like so many tons," and they would say, "Fine. The price today is X." And we would pay it. And that's whatever it is. If we decide to go that route, that's how we would satisfy our obligation. It might be a dollar. It might be ten dollars. The price that the Climate Trust charges to Chehalis Power is certainly neither here nor there from the Council's standpoint because Chehalis Power's obligation is ton for ton.

As far as selection of the expert, I think whether the person has advocated any position in front of the Council would be a factor you would all consider, but I guess I don't see any need to rule out at this point witnesses who have testified on CO2 issues before this Council. Those may be the folks who understand the issues best. I just don't know. I don't see any reason to rule them out from consideration and that would go for witnesses who testified on behalf of any party. I don't think you want to rule out one class of testifying experts but not another.

Selection of the local project. There was a suggestion that priority should be given to those with the greatest reduction at the least cost looking at the tons acquired. Again, we think that's the kind of factor that would be considered by the Council when we come in for a case-by-case consideration. We would not want to put it in the plan for several reasons. First of all, we think that could drive us toward projects that may not have the greatest overall benefits in terms of sustainable development or environmental benefits. I am hypothesizing, but it seems to me if there were two projects in Lewis County and one was planting hybrid poplars and the other was doing watershed restoration, if they were close and we had to give priority to one with the greatest greenhouse gas benefit, we might go with the poplars even though the Council might feel on an overall basis that the habitat restoration project was a lot more desirable and more valuable for the environment when taken as a whole. We don't think that there's any reason to limit EFSEC's flexibility in that regard.

There were a couple of comments about how the plan should be revised. We would hope that the Council would feel comfortable acting today on the plan. If you don't like the language there, we certainly will go back and rewrite it, but we're hopeful that there might be some ministerial way that you could approve the plan in concept with whatever revisions you feel are appropriate in terms of whether the rollover should be carried forward or backward looking, and whether any of the other suggestions should be adopted. And then we can go through, make the necessary revisions, work with your staff to confirm that we have hit the nail on the head and then consider the plan concluded. I guess the other issue that we would like direction on is whether the Council feels that it's necessary to obtain a site certification agreement before you approve some sort of local set aside. That would be Box A. Box B would be only when we come in looking for approval of a local project, or Box C would be not at all. Thank you.

CHAIR LUCE: Thank you. Council members have any additional items they would like to discuss?

MR. IFIE: I have a question for Rusty.

CHAIR LUCE: Okay.

MR. IFIE: In your evaluation do you think we need an amendment to the site certification agreement based on the agreement or the proposal that the Applicant has put forward?

MR. FALLIS: I think reasonable minds can differ, but I certainly take seriously the doubts expressed by Council members who are currently on the Council who sat on that case. I was not your legal advisor at that time, so I am not in as good a position as they are to discern what the Council's intent was. I certainly think there's a real issue there. I can acknowledge how one might read it another way, but I think there is a serious issue there, and I don't feel in a strong position to second guess Ms. Fenton and Mr. Carelli since they sat through that proceeding and certainly had a bird's eye view sort to speak of what the Council was trying to achieve in the amendment to the site agreement.

CHAIR LUCE: So that answer it would be prudent to have a site certificate amendment.

MR. FALLIS: I believe so.

CHAIR LUCE: Further questions? Mr. Showman.

MR. SHOWMAN: Rusty, I guess that means that it's not Ms. Thomas's version to C. So that still leaves the question is it A or B? Do we need a site certificate amendment before we act on the plan or would it be possible to have a site certificate amendment at the time they come in with a local project? And, if so, Ms. Fenton, looks like she wanted to say something.

MS. FENTON: Well, I think that Mr. Carelli may have some suggestions on how we deal with that because we did talk to Rusty to find out which box we could move toward.

CHAIR LUCE: Mr. Carelli.

MR. CARELLI: That being the case, I would thank Ms. Thomas for bailing me out of a box. And suggest that we approve the Chehalis greenhouse gas offset strategy plan in concept, realizing that there are some editorial areas that the Council would prefer to see not included; that there is need to revise a sentence on Page 10 and Page 11, and I could be more specific if you would like. Hopefully we won't have to. And that we need to clarify exactly how carry forward would work and would not work and the selection of the independent consultant. And I agree that it's probably in our best interest to have a site certification agreement and would suggest that we are approving this in concept. Before any local project could be undertaken a site certification amendment would have to take place. I hope that's a motion.

CHAIR LUCE: I think I will interpret that as a motion.

MS. FENTON: I will second it.

CHAIR LUCE: My understanding of your motion also is that when there is and if there is a site certificate amendment that the question of percentage would be open then at that point to address Mr. Ifie's issue. We have a motion. We have a second. Do we have discussion among the Council members? Rusty.

MR. FALLIS: I guess I just want to get the Council to focus on to what extent, if any there are still unresolved issues. The percentage is one, but we've had a series of discussions about the plan and iterations and discussions about several issues and different suggestions with several parties here today. I'm just not certain in my own mind what happens after today, how these issues get resolved if we are still in this series of ongoing discussions. I guess I am trying to push the Council a little bit to be as explicit as possible in those areas where there is consensus or where they can make a decision. I mean the Applicant has come back repeatedly and for legitimate reasons the discussion has gone on, but procedurally I am not certain I guess what happens from here on out given your suggestion, Chuck.

MR. CARELLI: That somebody from the certificate holder and somebody from the Council get together and work out agreeable language, language that is agreeable to the Council. Are you suggesting, Rusty, we not approve until we see a document before us?

MR. FALLIS: No. I am just suggesting that conceptually the Council be as specific as possible and go on record to the extent that it can on those major elements where there seems to be agreement. If there is work that can't be done today, then so be it.

MS. THOMAS: If it would be useful I had kind of an issue list in front of me and I could ask for confirmation or know that I've got the right idea in mind as I move forward to come up with a new draft.

MR. FALLIS: This is tedious I know. To get us all moving to where we actually get closer to the end result.

CHAIR LUCE: Can we take a five-minute recess for the court reporter to change paper.

(Recess taken.)

CHAIR LUCE: Back on the record.

MR. CARELLI: I will try and be brief. The Council is going to move that we accept the Chehalis Generating Facility Greenhouse Gas Offset Strategy and Plan with the following revisions: On Page 5 the Council would move that everything following Background be deleted, all of Page 6 would be deleted, and the two lines occurring at the top of Page 7 be deleted. Also Appendix B would be deleted as well. On Page 9 under Reporting Frequency and Proxy Price Approval Process in the last paragraph on that page and looking at the unlined portion in that paragraph reading Chehalis Power will ask EFSEC to prequalify. It's going to be our motion that we revise that to read *Chehalis Power and EFSEC will select an independent expert and that we add a sentence at the end of that paragraph saying in the event of disagreement over the choice of an independent expert, the EFSEC Council will make the final selection.*

Next, we are going to move to Page 10 under Selection of Local Offset Projects the first paragraph and in particular the second sentence be revised to read: *Chehalis Power may also determine that no project should be proposed at a particular time if there are no sufficiently attractive candidates.* And delete the remainder of that sentence. On Page 11 at the conclusion of the first full paragraph, that paragraph beginning If EFSEC denies approval, we would take the last sentence and revise it to read: *Alternatively, if no suitable project is defined or approved, Chehalis Power will acquire offsets on a ton-for-ton basis as described above. And*

delete the remainder of that sentence. Next, I am going to ask Council member Fenton for some help on this. Council is going to move that following that last revision that we add a sentence stating: that if no local project is selected for a given year, the local project (15 percent) portion of the offset requirement may not be carried forward.

MS. FENTON: The intent is that there isn't a 15 percent overriding life of the project cap for local projects. That if the project is submitted, it's submitted, if it's not submitted, then it's ton for ton.

CHAIR LUCE: Would you agree, however, there might be a proviso saying provided, however, that if a multi-year local project is proposed and accepted by the Council, this provision shall not apply or something like that? I just want to capture the fact that multi-year projects might come in.

MR. CARELLI: You took the words off my sheet of paper.

CHAIR LUCE: I'm sorry.

MR. CARELLI: Finally, in making that motion it would be the understanding of the Council that if at some point in time a site certification to -- let me back up. We believe it's the Council's position that a site certification agreement amendment would be required, and we would move that such an amendment be prepared. If at the time that amendment is prepared, what I want to say is that the question of the 15 percent limit for local projects is something that could be considered at that time if it were appropriate.

MS. FENTON: Just for clarification, that was the motion I seconded originally.

CHAIR LUCE: All right. I am sure that's what I heard, but thank you for confirming that. Any other comments by any Council members? We've had a motion. We've had a second. Is there a call for the question?

MR. FRYHLING: Question.

CHAIR LUCE: Mike, would you please call the roll.

MR. MILLS: Department of Community, Trade, and Economic Development.

MR. FRYHLING: Yes.

MR. MILLS: Department of Ecology.

MR. CARELLI: Yes.

MR. MILLS: Department of Fish and Wildlife.

MS. FENTON: Yes.

MR. MILLS: Department of Natural Resources.

MR. IFIE: Yes.

MR. MILLS: Utilities and Transportation.

MR. SHOWMAN: Yes.

MR. MILLS: The Chair.

CHAIR LUCE: Yes.

MR. MILLS: The motion carried unanimously.

MS. THOMAS: Thank you very much for your consideration on this. May I ask two questions just to make sure that I correctly understood the motion? With that possible reconsideration of the 15 percent limit at the time we seek an amendment to the site certification agreement is it also the Council's intent that we might propose reconsideration of the ability to cumulate local projects from one year to the next in order to obtain critical mass? I wasn't sure from the way that was phrased whether that was something that would be open in the amendment process or not.

CHAIR LUCE: Rusty, you can advise me on what's within the scope of the site certificate amendment, but I assume there's some latitude there within the parameters of the motion.

MR. FALLIS: I guess I understood the question to be, would the Council, is it the intent of this motion to permit Chehalis Power to make that request?

MS. THOMAS: Yes, as well as to open the question of whether 15 percent or some other percentage is the right number.

MR. FALLIS: Was that my sense -- I will let you speak to who made the motion.

MR. CARELLI: This is all Tony's fault. My sense would be that that would not be on the table.

MS. THOMAS: Is it the Council's direction that there be a possibility for cumulating obligations from one year to the next in the way that Council members Carelli and Fenton originally stated earlier at this meeting? Is that still an option in your interpretation?

MR. CARELLI: That is my understanding.

MS. THOMAS: Thank you.

MR. IFIE: I want to make a comment. I'm not sure what Chuck just agreed to about the 15 percent. I don't know if he's saying that that will not be on the table during the site amendment process. Is that what you're saying?

MR. CARELLI: I don't believe that was the question.

CHAIR LUCE: I believe the question was, can we cumulate the 15 percent over a number of years. I think the discussion we had was no. Provided, however, that if a project, a local project comes in that would take several years to implement, then that would be permissible within the scope of the motion as I understood it.

MS. FENTON: Yes.

CHAIR LUCE: And that the issue of 15 percent or more or less conceivably would be an open issue during the course of the site certificate amendment. Is that a fair summary?

MR. CARELLI: Yes. Right.

MS. THOMAS: Thank you.

CHAIR LUCE: Does this conclude the discussion and the adoption of the greenhouse gas plan?

MS. THOMAS: I think it does. Thank you very much.

CHAIR LUCE: Thank you. Mike, we have something else, don't we, for Chehalis?

<i>Consideration of Acquisition of Water Rights</i>	<i>Liz Thomas, Chehalis Power and Mike Mills, EFSEC</i>
---	---

MR. MILLS: Yes. I believe Liz is going to present a stipulation agreement that the company has entered into regarding the water use requirements, water quantity requirements for the project.

MS. THOMAS: There is in your packet a stipulation regarding Chehalis Power and the Department of Ecology regarding water mitigation procedures. This is the exact same document that was distributed at the executive committee meeting a week ago. There have been no changes to it. The purpose of the document is to put flesh on the bones of the site certification agreement. The pertinent portions of the site certification agreement are an attachment to the stipulation, and you will recall that they basically call for Chehalis Power to acquire 102 acre feet of water as mitigation for Chehalis Power's use of water when in-stream flows in the Chehalis River fall below the 165 cfs at Grand Mound. We're moving forward to that. We are looking for candidate rights. We've having some success we hope. This stipulation doesn't deal with any particular right and doesn't purport to satisfy any part of our commitment. Mostly we

wanted to be sure that the Council is comfortable with the procedures that have been agreed to between Chehalis Power and the Department of Ecology regarding processing these water rights. I don't think Mary Sue Wilson is here. Ron?

MR. LAVIGNE: I'm here on her behalf.

MS. THOMAS: Ron Lavigne who participated in this project the initial go around on water supply issues is here, and as I understand it the stipulation was worked out primarily between another lawyer in my office named Adam Bradley and another lawyer in Ron's office named Mary Sue Wilson, so we are equally equipped to speak to it.

Basically the key elements of the stipulation are that Chehalis Power promises to give Ecology the documentation on any proposed water right three weeks before we give it to you. The purpose for that is to spend three weeks, we hope, reaching agreement with Ecology on what portion of the right is in beneficial use so that with luck we can give you a package of something that's already been agreed to between Ecology and Chehalis Power. We'll still give the Council the 30 days called for by the site certification agreement. We have a December 31st drop dead date, we must provide you with 102 acre feet of water by December 31st. This stipulation clarifies that as long as we give you the package of materials by December 31st to the extent you approve any acre foot that acre foot counts towards our commitment. Just to refresh your memories, if we don't find the 102 acre feet by that December 31st deadline, then we have to pay at the rate of \$4,000 per acre foot for whatever acre feet we didn't locate to the Chehalis River Council or some similar organization.

I am not sure what approach the Council would want to use today. Really what we're looking for is the sense of the Council that you're comfortable with us proceeding along the lines that we've outlined here in the stipulation, and, Mr. Lavigne, you may want to supplement that in any way.

MR. LAVIGNE: I really don't have anything to add. Ms. Wilson explained the agreement to me this morning, and my understanding the agreement is the same as Ms. Thomas has explained to the Council.

CHAIR LUCE: Do we have a sense of the Council that the stipulation between the parties as to the process by which this water should be acquired or funds paid is reasonable and acceptable? Yes, we have that sense of the Council I would note for the record. Mike, would you like something more official?

MR. MILLS: No, I don't think we need anymore. It would be staff's recommendation that we would then issue the company whatever condition has been reviewed and is consistent with the SCA requirements.

CHAIR LUCE: That's reasonable. Thank you.

MS. THOMAS: Thank you very much.

CHAIR LUCE: Thank you. The next item on the agenda, Mr. Bates.

<i>Construction Progress Report</i>	<i>Steve Bates, Chehalis Power</i>
-------------------------------------	------------------------------------

MR. BATES: Our job is progressing well. We now have 444 people on site involved in the construction of the facility. Currently we're 38 percent complete on the construction activities. We're 99 percent complete on engineering and 91 percent complete on procurement, and so the total project stands right now at 76 percent complete.

The following activities were conducted during the last month. We've started these activities: Installation of underground off-site city sewer system upgrades in the gas pipeline, erection of the combustion turbine building and structural steel, erection of No. 1 and No. 2 heat recovery steam generator ladders, platforms, piping, and erection of the piping for the tank farm and pipe

racks. And we are also continuing to work on the air-cooled condenser steam ducting fans and structural steel work, as well as the BPA switchyard equipment.

Storage tanks are now probably 80 percent complete on painting. We have one more section of one tank to complete, so that's pretty near complete. And we've completed the installation of the two modules and the steam drums for both heat recovery steam generators. All that equipment is now in place. Completed the underground electrical duct work. We have completed erection of the switchyard electrical dead end towers. They are now done, and the control building for the switchyard is also in place.

The steam turbine building structural steel's overhead bridge crane as well as the overhead bridge crane for the combustion turbine building are now in place and have been tested. And the underground off-site water and sewer lines within the city system are now complete up to the site. There's still some work going on off site. Air compressors and water treatment equipment is now being set in the building and the step-up transformer fire walls are now poured and step-up transformers are now in place and close to completion. Our services building is almost complete. As far as our office area we will be moving in within the next month or so, so that is progressing well.

As far as the schedule goes, we remain on schedule with an opportunity to improve. Based on major equipment deliveries we are getting some of our equipment earlier than we first expected, so that is good news for us on the project. And Liz already mentioned the water rights issue and where we stand on that. That's progressing well. Environmental monitoring has been ongoing with no issues to report. So that completes my report on the status of the project. Are there any questions?

MS. FENTON: I have two questions. How is your safety record going?

MR. BATES: Safety record is going very well. We've had two injuries that required people that were lost-time injuries unfortunately, and both of those people have recovered and are now doing well.

MS. FENTON: Great. The second question is the monsoon season is about to come upon us. Is the site ready to handle it this year?

MR. BATES: Yes, we are. The site is really well rock. We've got rock in all the ditches. The whole site is basically covered in rock. The switchyard area is also covered in rock, and we are prepared for the weather, which we know is coming, and we have enjoyed a great, dry summer, and we got a lot of work done. So we know it's coming, so we are prepared.

CHAIR LUCE: Other questions from Council members? Any questions from the public?

Thank you very much. I appreciate the report.

MR. BATES: Thank you.

ITEM NO. 8: ENERGY NORTHWEST COLUMBIA GENERATING STATION & WNP-1/4

<i>Columbia Operations</i>	<i>John Arbuckle, Energy Northwest</i>
----------------------------	--

CHAIR LUCE: Now unless I am mistaken Energy Northwest, is that correct, Mike?

MR. MILLS: Yes.

MR. ARBUCKLE: Okay. There's not really much to report from Columbia. We completed our security upgrades, and we had a recent reorganization. Our V.P. of generation went to

Ontario Power, so that the management reorganized, and I think you should have a copy with your briefing paper. It is the talking points from the paper.

I'm working on a couple letters. One is informing you of our plans to relocate the Visitor Center and also to install a hydrogen storage facility that's part of a hydrogen water chemistry system we're putting in. And next month I will provide a briefing on dry cask storage because we are about a month away from loading our first canister. So that's all I have.

<i>WNP-1/4 Site Restoration</i>	<i>Jim Luce, EFSEC Chair</i>
---------------------------------	------------------------------

CHAIR LUCE: Great. Any questions from the Council? Thank you. WNP 1 and 4 site restoration I think we will have more to report perhaps by the next executive committee meeting.

ITEM 9: SUMAS 2 GENERATION FACILITY

<i>Status Report</i>	<i>Irina Makarow, EFSEC Staff</i>
----------------------	-----------------------------------

CHAIR LUCE: Irina, you're ready for a status report on Sumas 2?

MS. MAKAROW: On August 23rd, the Governor approved the siting of the Sumas Energy 2 Generation Facility, and following that approval, staff transmitted the PSD permit up to EPA Region 10 for their signature. They signed it late last week, and they presumably were going to return it to us by Fed Ex on Friday, and we're anticipating receipt today. Once that is done, that permit with the responsiveness summary will get sent to all those people who commented on that permit, and then there will be a 30-day appeal period through federal regulation. If we receive no appeals, then the facility is permitted by both the State and EPA. That is the end of my status report on Sumas Energy 2. Do Council members have any questions?

MR. FIKSDAL: I don't have any questions. I have one other thing.

CHAIR LUCE: Does the Council have any questions?

MR. FIKSDAL: I just think we should note this letter that I received regarding Ms. Makarow from Carol Jolly, and I think we should read it or all Council members should read it.

CHAIR LUCE: I will read it for the members of the audience. Dear Allen, I am writing to convey my deep appreciation and admiration for the exceptional work done by Irina Makarow of your staff during our recent deliberations on Sumas Energy 2. Over the 60-day window while the Governor was considering his decision, I needed to prepare a number of briefing papers and draft documents for his review. Repeatedly questions arose about technical requirements imposed on the project by the draft site certification agreement or the hearing record or the significance of specific elements of EFSEC's order. I cannot tell you how valuable it was to have Irina available as a resource to help me answer those questions and provide thorough and thoughtful explanations.

No matter how often I called or stopped by her attitude was invariably positive and helpful. One day when she was on leave, she even gave me her home phone number, so I could reach her there. I realized that she was handling this in addition to her regular responsibilities for projects still under Council review. All of us here in the Governor's office involved with the Sumas project decision benefited from Irina's high caliber assistance. I believe that this outstanding work should be recognized as going above and beyond the ordinary, and I hope that you can include this message in Irina's personnel file for future reference when her performance is being evaluated. Sincerely, Carol Jolly, Acting Director of the Executive Policy Office.
(Applause for Irina.)

MS. MAKAROW: Thank you.

CHAIR LUCE: Thank you. Thank you, Allen. That was very appropriate.

ITEM NO. 10: WALLULA POWER PROJECT

<i>Status Report</i>	<i>Irina Makarow, EFSEC Staff</i>
----------------------	-----------------------------------

CHAIR LUCE: Wallula Power Project. Irina.

MS. MAKAROW: A very brief status report. Staff issued the Final EIS on August 16th. It was mailed to anybody who submitted a comment to the Draft EIS or anybody who received the Draft EIS as well as local libraries. Right now staff is working closely with our ALJ, Don Meath, in assisting the Council to develop their recommendation for the Governor. We will be in communication with you more regarding meeting dates and schedules.

CHAIR LUCE: Thank you so much. Any questions from Council members? Questions from the public? Hearing no questions, we will move onto the next item.

ITEM NO. 11: STARBUCK POWER PROJECT

<i>Status Report</i>	<i>Irina Makarow, EFSEC Staff</i>
----------------------	-----------------------------------

CHAIR LUCE: Starbuck Power Project, a status report.

MS. MAKAROW: In your packets you will find a letter sent by Mike Elmer on behalf of the Starbuck Power Company that we received in our office on September 4th. In this letter, Mr. Elmer requested that the Council continue the suspension of the review of the Starbuck Power Project for another six months. For those Council members who were not with us six months ago when the Council acquiesced to a suspension of the review of the Starbuck Power Company, we requested that they come back to us in six months if not earlier with a status report. Mike Elmer is here today, and I would invite Mike to come and tell us about the project's status.

MR. ELMER: Thanks, Irina. Thank you, Chair, Council, and staff. As Irina mentioned we would like to request another six-month suspension of the review. We have ongoing dialogue with interested parties to provide interim financing and/or ownership operation of the project. We have been maintaining all aspects of the project. We have frequent communication with Columbia Commission and also Columbia County interested residents, and obviously they're still very interested in the project going forward. It's our intent to notify the Council when we are ready to restart the process, and certainly we would hope that would be prior to the six-month request. And given the time and effort that has been expended on the project, we would appreciate the Council's consideration, as well as Starbuck feeling there's a strong need for this project in the region.

CHAIR LUCE: Thank you. Do we need any formal action, Irina or Allen to accept this request for an additional six months?

MR. FIKSDAL: I believe so.

CHAIR LUCE: Do I have a motion to accept this extension for an additional six months?

MS. FENTON: Yes.

MR. IFIE: Second.

CHAIR LUCE: Any Council discussion?

CHAIR LUCE: Call for the question. All in favor of the extension for an additional six months say aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: Thank you.

MR. ELMER: Thank you.

MS. MAKAROW: Excuse me, Chair Luce. Before we leave the Starbuck Power Project, I would just like to add something onto our record regarding the quarterly billings for Mike Elmer as well as PPL Global. There are some funds that are due and there's approximately \$80,000 worth of previous review that we haven't yet billed. About \$50,000 was prior to April 1st which was when the project was transferred from PPL Global back to Northwest Power Enterprises and \$30,000 was after the transfer. We are working very diligently on getting the billing out to Mr. Elmer and PPL Global very soon.

CHAIR LUCE: Thank you and good luck.

MR. ELMER: Thank you.

ITEM 12: CHAIR'S REPORT

<i>Standards/Rules</i>	<i>Jim Luce, EFSEC Chair</i>
------------------------	------------------------------

CHAIR LUCE: The last item on my agenda is the Chair's report on standards and rules. We were to have had a subcommittee meeting last Friday, but we were committed to other projects that thoroughly involved all of our time, so we will reschedule that in the very near future. I hope all of you had an opportunity to review the second revised draft report and the rules. I called Mr. Krogh this morning to make sure that we really did have all of the packages together and sent us booklets that had everything in this. And then we need to sit down and figure out which steps are next and how we go forward from here. I apologize that the subcommittee did not have a chance to get to that last Friday.

MS. FENTON: We don't have the whole thing back. We have the first version.

CHAIR LUCE: Right. We have the whole thing in the first version, but we need the whole thing in the second version, final version.

MS. FENTON: Subsequent submittals.

CHAIR LUCE: Right.

MR. FIKSDAL: Mr. Chair.

CHAIR LUCE: Yes.

MR. FIKSDAL: I got a call from Stephanie Watson, and she asked if it would be okay once the report is complete and all the draft rules are completed, if we could put it on our web site, so that it would be easier for people to see. And I said, yes, that would be fine.

CHAIR LUCE: That makes all the sense in the world.

Is there anything else to come before the Council today?

MR. IFIE: Do you have a sense of when the next meeting of that subcommittee that you are putting together will be meeting, to replace the meeting that was postponed from last Friday?

CHAIR LUCE: What do we have next month, an executive meeting? I'm not going to be here. We could try to set up a conference call maybe on Wednesday to do it, to get it going, this Wednesday if you're around, everybody.

MR. FIKSDAL: Next Wednesday you're talking about.

CHAIR LUCE: This Wednesday or next Wednesday.

MS. FENTON: Why don't you just send us an e-mail.

CHAIR LUCE: The last time I did that it was mess. Yes, I will send an e-mail promptly, and it will either be this Wednesday or next Wednesday. So is there anything else to add? Thank you very much. We stand adjourned. Yes.

MR. FRYHLING: I just want to thank the committee that worked on the greenhouse gas plan for their hard work. It was a real good effort and the results were very positive.

CHAIR LUCE: I agree.

MR. FRYHLING: I thank them as a Council member for their hard work.

CHAIR LUCE: Thank you. They did such great work we may have to draft them again as the standing committee. Thank you.

(Whereupon, the Council meeting was adjourned at 4:16 p.m.)